BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket 92-266
	)	
Rate Regulation	)	
	)	

BELLSOUTH'S COMMENTS ON PETITIONS FOR RECONSIDERATION

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I. Introduction And Summary

The Commission's Rate Regulation Order is an important step toward implementing the 1992 Cable Act. BellSouth Telecommunications, Inc. (BellSouth) is particularly supportive of the Commission's decision to utilize price caps to regulate future rate increases after setting initial cable rates at a reasonable level. This decision provides the Commission with an opportunity to make significant progress in moving cable and telephone companies toward a common regulatory model which will facilitate regulatory parity as competition between these two industries intensifies.

While BellSouth supports the Commission's decision to apply price caps to cable companies, the Commission must reject requests to treat capital investment in new cable systems as external (i.e., exogenous). Such treatment is specifically prohibited by the Cable Act because it would allow cable companies to fund two-way

and other non-cable services with regulated cable rates and would be fundamentally unfair based on the regulations currently imposed on Local Exchange Carriers (LECs).

The Commission's price cap regulations should accommodate the reasonable capital investment requirements of providing advanced, one-way cable services. The initial cable rates allowed under the Commission's price cap regulations already reflect the rapid recovery of capital costs characteristic of the cable industry. Furthermore, the Commission has allowed cable companies to treat a significant portion of their

underlying price cap regulation and treat LEC exogenous costs in a manner more comparable to cable.

The Commission should also reconsider its decision to refrain from regulating cable rates where a local franchising authority has decided not to regulate rates. The statute requires the Commission to regulate basic cable rates in such circumstances.

Finally, the Commission may not presume that Satellite Master Antennae Television Systems (SMATVs) meet the 50% penetration test associated with determining whether effective competition exists in a particular franchise area. The only presumption supported by the record and by general knowledge of the industry is that SMATVs do not offer their services to at least 50% of the households in any particular franchise area.

II. The Commission Should Reject Requests For External (Exogenous) Treatment Of Capital Costs Of Cable System Improvements Under Its Price Cap Regulations.

Numerous cable operators have asked the Commission to reconsider its decision to disallow the automatic pass-through to consumers of capital costs of network improvements under its cable price cap regulations.[1] In essence, cable companies argue that an automatic pass-through is needed to encourage and ensure the timely recovery of capital investment in new cable plant.

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[1] See Report and Order, MM Docket No. 92-266, 58 Fed. Reg. 29553 (1993) (hereinafter "Cable Rate Order"), n. 608.

Petitioners' request is totally without merit and should be denied.

A. Exogenous Treatment Of Capital Investment Would Allow Cable Companies To Fund Non-Cable Services With Regulated Cable Rates, Which Is Prohibited By The Cable Act.

Exogenous treatment of investment costs of rebuilds and system upgrades made for the purpose of providing non-cable services would violate the Congressional mandate to exclude from basic cable rates the recovery of direct costs of providing non-cable services. The legislative history of the 1992 Cable Act is unambiguous on this point:

> The language [of the Act] is also clarified to ensure that the direct costs of providing non-basic cable services are not considered joint and common costs and are not recovered in the rates charged for basic cable service. ... The regulated, basic tier must not be permitted to serve as the base that allows for marginal pricing of unregulated services.[2] (emphasis added).

Numerous cable companies, including some of the Petitioners, have widely publicized their intentions to upgrade their cable systems to provide two-way, interactive video, information, and telecommunications services. As indicated above, none of these upgrade costs may legally be recovered through rates for basic cable service. Yet, that is precisely what would occur if the Commission were to grant the Petitioners' request.

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[2] H.R. Conference, Rep. No. 862, 102nd Cong., 2nd Sess. at 63 (1992).

Cable operators should not be allowed to leverage their monopoly cable position into non-cable service markets.

By statutory definition, cable services only include the one-way transmission of video programming and other programming services, with the limited exception of subscriber interaction required for the selection of one-way cable programming services.[3] There is no such thing as two-way cable services. Consequently, the direct costs, including but not limited to capital costs, of providing two-way transmission capabilities and services may not be included in basic cable rates. An automatic pass-through of this capital investment, as suggested by the Petitioners, would violate both the terms and the intent of the 1992 Cable Act.

To the extent cable operators believe the Commission's price cap regulations do not adequately provide for the recovery of investment needed to provide advanced "cable services", cable operators have the option of recovering that investment through a cost-of-service demonstration. The standards governing cost-of-service showings are the subject of the Commission's recently adopted Notice of Proposed Rulemaking.[4] Cable

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[3] See definition of "cable service" set forth in 47 U.S.C. § 522(5).

[4] See Notice of Proposed Rulemaking proposing requirements to govern cost-of-service showings by cable operators, adopted at the Commission's July 15, 1993 open meeting.

companies should address whatever additional concerns they have regarding recovery of capital costs in that

arguments that these capital recovery rates, which the cable companies adopted for themselves prior to regulation, are inadequate.

The Commission's price cap regulations also permit the automatic pass-through (exogenous treatment) of other significant cable costs such as taxes, most programming costs, transmission consent fees, and cable franchise fees.[6] Furthermore, there is no requirement that cable operators share earnings as LECs currently must do under price cap regulation.[7] Thus, cable operators enjoy the full benefits of pure price cap regulation, including initial rates that allow for the rapid recovery of capital, and exogenous treatment of a significant portion of their total costs. Petitioners have failed to demonstrate that their reasonable capital needs cannot be accommodated by such a plan.

BellSouth's Reply Comments filed April 13, 1993 advocating the adoption of the "Price Cap Carrier Option" for price cap LECs to simplify the depreciation prescription process.

[6] Cable Rate Order, pp. 153-63.

[7] The price cap formula for cable should also include a "productivity factor" requiring annual rate reductions in inflation-adjusted terms. (See Comments of BellSouth previously filed in this docket, dated January 27, 1993, pp. 10-16). BellSouth understands that this issue will be addressed in the Commission's upcoming Second Further Notice of Rulemaking. (See Cable Rate Order p. 147 n. 558 and p. 152 n. 577).

C. The Commission Should Use Price Cap Regulation To Move Cable And Telephone Companies To

The Commission should affirm its decision to apply a pure price cap plan to cable companies. The Commission should then take action in other proceedings to move price cap LECs to a pure price cap plan. Specifically, the Commission should eliminate the earnings sharing mechanism and the tight basket and band constraints or sub-indices that compromise the economic principles underlying LEC price cap regulation, and treat LEC external (exogenous) costs in a manner more comparable to cable. By using price caps to establish regulatory parity between these two industries, the Commission can maximize the public benefits of its policies by ensuring that free market forces rather than its rules determine the winners and losers in the marketplace.

III. The Statute Requires the Commission To Regulate Basic Cable Rates Where Local Regulatory Authorities Decline To Regulate Rates.

In the Cable Rate Order, the Commission determined that it would not regulate basic rates where a local government elects not to seek certification because of a decision not to regulate rates.[8] BellSouth supports Bell Atlantic's Petition for Reconsideration and argument that the statute does not permit such a regulatory vacuum to exist, regardless of the circumstances giving rise to such decision.

The 1992 Cable Act states, in relevant part:

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[8] Cable Rate Order para. 54.

> (2) If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a state or franchising authority under this Section. If the Commission finds that a cable system is not subject to effective competition -
>
> > (A) The rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b).[9] (emphasis added).

The unambiguous terms of the statute, quoted above, do not contemplate a situation in which neither the local franchising authority nor the Commission regulate the basic service rates of systems not facing effective competition. However, this is precisely what the Commission proposes, even though it admits that it is not compelled by the statute to refrain from regulating rates in such circumstance.[10]

As Bell Atlantic points out in its Petition, the Commission's position contravenes Congressional intent.[11] The fundamental underlying purpose of the 1992 Cable Act is to protect consumers from the exercise of cable's

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[9] Section 622(a)(2) of the 1992 Cable Act, 47 U.S.C. § 543(a)(2).

[10] Cable Rate Order para. 53.

[11] Petition of Bell Atlantic for Limited Reconsideration, pp. 7-8.

market power through the regulation of cable rates in the absence of effective competition. Where the local franchising authority accepts this responsibility, certification and compliance with rate regulations prescribed by the Commission are a condition to exercising jurisdiction. Where the local franchising authority elects not to regulate rates, the statute fixes that responsibility squarely upon the Commission. The Act simply does not permit a third option whereby monopoly cable systems may enter into side agreements and understandings with local franchise authorities to avoid regulation of basic cable rates.

Accordingly, BellSouth respectfully requests that the Commission reconsider its decision and grant Bell Atlantic's Petition on this issue.

IV. The Commission May Not Presume That SMATVs Meet The Fifty Percent Penetration Test.

BellSouth supports the request of certain local government representatives[12] that the Commission reconsider its finding that, for purposes of determining whether effective competition exists,[13] SMATV services

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[12] National Association of Telecommunications Officers and Advisors, National League of Cities, United States Conference of Mayors, and the National Association of Counties ("local governments").

[13] The statute states, in relevant part, that "effective competition" exists where: "(B) the franchise area is - (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50% of

are presumed to be both technically and actually available in all franchise areas that do not, by regulation, restrict the use of home satellite dishes.[14] The local governments correctly observe that SMATV systems are typically limited to providing service to multiunit buildings and do not offer their services to single-unit family residences.[15] Thus, there is no record basis to support a presumption that a SMATV service offers programming to at least 50% of the households in a franchise area.

To the contrary, the presumption that the Commission must draw from the record and general knowledge of the industry is that SMATVs do not offer their services to at least 50% of the households in any given franchise area. It is illogical to draw any other presumption from these facts.

Of course, cable operators should be given an opportunity to rebut this presumption with evidence supporting a contrary finding. In the absence of such demonstration, however, the Commission should presume

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the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15% of the households in the franchise area." 47 U.S.C. 543(1).

[14] Cable Rate Order para. 31.

[15] Local Government Petition for Reconsideration p. 19.

that SMATV service is not offered to at least 50% of households in any given area. BellSouth urges the Commission to grant the local governments' Petition regarding this point.

V. Conclusion

The Commission should affirm and reconsider its rate regulation rules for cable in accordance with the above.

Respectfully submitted,

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July 21, 1993

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I hereby certify that I have this 21st day of July, 1993 serviced all parties to this action with a copy of the [redacted]

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